

RECEIVED

Before the

FEDERAL COMMUNICATIONS COMMISSION

JUN 16 1993

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)
)
TRINITY BROADCASTING OF)
FLORIDA, INC.)
For Renewal of License of)
Station WHFT(TV), Miami, Florida)
)
and)
)
GLENDALE BROADCASTING COMPANY)
For Construction Permit)
Miami, Florida)

MM Docket No. 93-75
File No. BRCT-911001LY

File No. BPCT-911227KE

TO: The Honorable Joseph Chachkin
Administrative Law Judge

JOINT REPORT

The parties respectfully submit this Joint Report to inform the Presiding Judge of the results of their conference held on June 11, 1993, to discuss a feasible procedural schedule for this proceeding. As set out below, subject to the Presiding Judge's approval, the parties have reached agreement on a basic procedural schedule that will fulfill the Presiding Judge's preference announced at the initial prehearing conference that the hearing commence by November 29, 1993.

1. By way of background, this is an important renewal hearing involving a major market television license now held by a group owner whose basic qualifications to hold that license

No. of Copies rec'd
List ABCDE

No. of Copies rec'd
List ABCDE

are at issue. On May 21, 1993, the parties held their initial conference to discuss procedures. At that conference the parties recognized that, given the nature of the issues in this proceeding, the first step to establishing a viable overall procedural schedule was to determine a schedule for the production of documents, from which the schedule for depositions, exchange of hearing exhibits, and the remainder of the proceeding would follow. The parties also recognized that: (a) §1.325(a)(2) of the Rules provides that all objections to requested documents, including objections based on privilege, should be filed within 10 days from the service of document requests; (b) a party's objections to document requests, especially objections based on privilege, could not be prepared without first reviewing each requested document; and (c) given the nature of the issues and the number of documents likely to be requested, it was implausible that all requested documents could be reviewed quickly enough to raise privilege and other objections within a 10-day period. The parties therefore agreed that first a date should be set for the service of document requests and then, upon assessment of those requests, another meeting should be held to discuss a feasible schedule for reviewing, making objections to, and producing the requested documents.

2. Accordingly, the parties agreed that requests for documents should be served by June 7, 1993, and that the parties

would hold a further meeting on June 11, 1993. On June 7, 1993, the document requests were served. With respect to Trinity Broadcasting of Florida, Inc. ("TBF"); Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network ("TBN"); and National Minority TV, Inc. ("NMTV"), the document requests collectively ask for a total of 160 categories of documents that span a period of nearly 14 years. TBF, TBN, and NMTV report that the documents requested are located in over 30 different jurisdictions across the country and that obtaining them requires contacting numerous principals, agents, and other individuals who were custodians of the documents over the 14-year period involved.

3. On June 11, 1993, the parties held their further conference. Counsel for TBF, TBN, NMTV, Glendale Broadcasting Company ("Glendale"), and the Mass Media Bureau participated in person. Counsel for Spanish American League Against Discrimination ("SALAD") participated by speakerphone. Based on that meeting, subject to the Presiding Judge's approval, the parties have reached agreement on the following procedural schedule:

a. June 16, 1993 -- The parties will file a joint report to the Presiding Judge describing the results of the June 11 meeting. The parties also will file a joint motion requesting that the date for filing objections to document requests, including claims of privilege, be extended to July 21,

1993, in accordance with the schedule on which the parties have agreed.

b. June 17, 1993 -- TBF will file its reply to Glendale's opposition to and the Mass Media Bureau's comments on TBF's motion to dismiss Glendale's application.

c. June 22, 1993 -- TBF will file its reply to Glendale's opposition to and the Mass Media Bureau's comments on TBF's contingent motion to enlarge the issues against Glendale.^{1/}

d. June 25, 1993 -- The parties will produce the documents agreed upon in the "Stipulation" filed on May 28, 1993.

e. June 29, 1993 -- Counsel for the parties will meet to discuss the pending unresolved document requests, with a view toward: (i) identifying those document requests that are unobjectionable, (ii) reaching as much agreement as possible to reduce duplication among the various parties' document requests, and (iii) narrowing as much as possible the differences among the parties concerning the document requests.^{2/}

^{1/} A consent motion for extension of time was filed on this matter on June 10, 1993.

^{2/} TBF, TBN and NMTV note that they already have commenced the extensive process of searching for the thousands of documents that have been requested at numerous locations and from numerous people, without awaiting the June 29 (continued...)

f. July 21, 1993 -- The parties will serve their objections to the document requests including the schedules of documents for which privilege is claimed.^{3/}

g. August 2, 1993 -- The parties will file motions to compel the production of documents to which objections have been made. This date is based precisely on the time period for filing motions to compel following objections to document requests as specified in §1.325(a)(2) of the Commission's Rules.

h. Between August 5-12, 1993 (as scheduled at the

Expedite the Resolution of Cases, 6 FCC Rcd 157, 161 (1990), that the Presiding Judge would be expected to dispose of motions to compel "within 10 calendar days." However, that suggested schedule naturally is subject to the Presiding Judge's discretion and convenience.^{4/}

i. Three business days after the Presiding Judge rules on motions to compel -- The parties will produce the requested documents.

j. September 7 - October 8, 1993 -- The parties agree that depositions will be conducted during this period. This schedule essentially calls for the initial depositions to commence approximately three weeks after document production with approximately one month established for the conduct of depositions. Given the number of witnesses and their various locations, the parties believe that this proposed schedule is as tight as is realistically feasible.^{5/}

^{4/} The parties believe that the Commission's Rules may be ambiguous as to whether parties have the right to file oppositions to motions to compel. In any event, in view of the Presiding Judge's indication at the initial prehearing conference that he is disposed to rule on objections to document requests in the forum of a prehearing conference, and to eliminate an additional procedural step, the parties have agreed not to file oppositions to motions to compel the production of documents, but rather to address the motions to compel and their oppositions to document requests at the prehearing conference.

^{5/} TBF, TBN, NMTV, Glendale, and the Mass Media Bureau agree that, with the exception of members of the public who are witnesses either on behalf of the parties or pursuant to
(continued...)

k. November 8, 1993 -- The parties will exchange their written direct case hearing exhibits. This schedule affords barely a month following completion of depositions to prepare hearing exhibits, which the parties believe is the shortest period realistically feasible.

l. November 15, 1993 -- The parties will notify each other of the witnesses that they desire for cross-examination.

m. November 18, 1993 -- The parties will file with the Presiding Judge any objections to the witness notifications. This allows a period of 11 days before the start of the hearing for the Presiding Judge to rule on any such objections.

n. November 29, 1993 -- The hearing will commence in Washington, D.C. Subject to the Presiding Judge's approval, the

^{5/}(...continued)

§1.225 of the Rules (which witnesses are discussed in paragraph 4 below and are hereafter collectively referred to as "public witnesses"), the proposed window from September 7 - October 8 for the conduct of depositions should encompass all depositions, including the depositions of employees and principals of TBF with respect to the renewal expectancy issue and other witnesses who might testify concerning that issue. SALAD believes that the depositions of employees or principals of TBF and other individuals with respect to the renewal expectancy issue should not be conducted during the September 7 - October 8 window, but instead should be conducted pursuant to the procedure discussed in paragraph 4c below. At the conclusion of this report the parties request that, should the Presiding Judge believe it would be helpful, a further prehearing conference be convened to resolve the few matters concerning which the parties have been unable to reach complete agreement and to finalize the procedural

parties agree that it would be efficient for the hearing to commence on November 29, 1993, with an evidentiary admission session.

4. The foregoing proposed schedule represents a comprehensive schedule for the conduct of this proceeding, except for a procedure addressing the testimony of public witnesses concerning the renewal expectancy issue. In light of the number of public witnesses likely to be involved and their location in the Miami area, the parties believe that it would not be feasible to include public witness testimony in the extremely tight procedural schedule described above and still meet a hearing commencement date of November 29, 1993. The parties therefore agree that the introduction of public witness testimony should be conducted pursuant to a procedure that would be concluded shortly after the principal hearing session. The parties further agree that such procedure should commence with the exchange of direct case public witness testimony by all parties on the November 8 uniform exhibit exchange date specified above. The parties have been unable to agree on the procedure that should then follow. The parties' respective positions are as follows:

a. TBF believes that examination of public witnesses should be conducted under the direct observation of the Presiding Judge at a hearing session for that purpose. Accordingly, TBF proposes that the testimony of public witnesses

concerning the renewal expectancy issue should be taken at a hearing session in the Miami area and suggests that such hearing session be scheduled at the Presiding Judge's convenience on or after January 10, 1994. Under TBF's proposal, absent any rebuttal sessions that the Presiding Judge may schedule, the hearings would be concluded at the end of that session.

b. Glendale and the Mass Media Bureau believe that the introduction of public witness testimony should be conducted through a deposition procedure that would be followed by an evidentiary admission session before the Presiding Judge. They suggest that a schedule be established for (i) noticing the depositions of public witnesses; (ii) taking those depositions during a period following completion of the principal hearing that will commence on November 29, 1993; and (iii) holding an admissions session before the Presiding Judge in Washington, D.C., at which the deposition testimony would be offered into evidence and any objections could be made and resolved. Under this proposal, absent any rebuttal sessions that the Presiding Judge may schedule, the hearings would be concluded at the end of the public witness admissions session.

c. SALAD believes that a hybrid of the procedures respectively proposed by the other parties should be followed. SALAD proposes that a limited number of public witnesses should testify under the Presiding Judge's direct observation at a hearing session in the Miami area, and that the remaining public

witness testimony may be introduced through a deposition procedure and admissions session. SALAD further believes that the testimony of employees and principals of TBF and other individuals relating to the renewal expectancy issue should be adduced in accordance with the same procedure that is established for the taking of public witness testimony. Under SALAD's proposal, absent any rebuttal sessions that the ALJ may schedule, the hearings would be concluded at the end of the later to occur of the hearing session or the public witness admissions session.

5. The foregoing proposals represent the parties best efforts to agree on a realistically feasible procedural schedule that will enable the hearing to commence by November 29, 1993. At this time, should the Presiding Judge believe it would be helpful, the parties request a further prehearing conference at the Presiding Judge's convenience for the purpose of (i) addressing any questions he may have about the parties' proposed procedural schedule, (ii) resolving the few matters concerning which the parties have been unable to reach agreement, and (iii) formally establishing and adopting a procedural schedule for this proceeding. Should such a conference be held, counsel for

SALAD respectfully requests that he be permitted to participate
by speakerphone.

Respectfully submitted,

TRINITY BROADCASTING OF FLORIDA, INC.

By: Howard A. Topel
Colby M. May
Joseph E. Dunne III
Nathaniel F. Emmons
Howard A. Topel
Its Attorneys

NATIONAL MINORITY TV, INC.

By: Howard A. Topel
Colby M. May
Joseph E. Dunne III
Nathaniel F. Emmons
Howard A. Topel
Its Attorneys

TRINITY CHRISTIAN CENTER OF SANTA ANA,
INC. D/B/A TRINITY BROADCASTING NETWORK

By: Howard A. Topel
Colby M. May
Joseph E. Dunne III
Nathaniel F. Emmons
Howard A. Topel
Its Attorneys

GLENDAL E BROADCASTING COMPANY

By: Lewis I. Cohen / HAT
Lewis I. Cohen
John J. Schauble
Its Attorneys

MULLIN, RHYNE

ID:202-872-0604

JUN 16 '93 12:21 No.012 P.14

**SPANISH AMERICAN LEAGUE AGAINST
DISCRIMINATION**

By: 
David Honig
Its Attorney

HEARING BRANCH, MASS MEDIA BUREAU

By: _____
James Shook
Gary Schonman
Its Attorneys

**SPANISH AMERICAN LEAGUE AGAINST
DISCRIMINATION**

By:

David Honig
Its Attorney

HEARING BRANCH, MASS MEDIA BUREAU

By:

James and Shook
James Shook
Gary Schonman
Its Attorneys

CERTIFICATE OF SERVICE

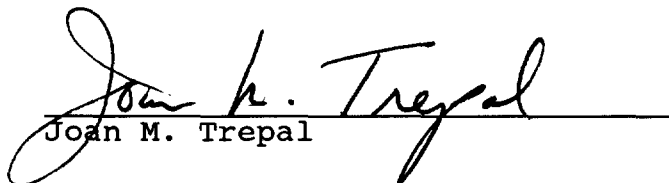
I, Joan M. Trepal, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, hereby certify that on this 16th day of June, 1993, copies of the foregoing "Joint Report" were sent by first class mail, postage prepaid, to the following:

- * The Honorable Joseph Chachkin
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.--Room 226
Washington, D.C. 20554

- * James Shook, Esq.
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.--Room 7212
Washington, D.C. 20554

- * Lewis I. Cohen, Esq.
John J. Schauble, Esq.
Cohen & Berfield
1129 20th Street, N.W.
Washington, D.C. 20036

David E. Honig, Esq.
1800 N.W. 187th Street
Miami, FL 33056


Joan M. Trepal

* Hand Delivered.